

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

29533

FILE: B-215355

DATE: October 9, 1984

MATTER OF: Latitudes Marine, Inc.

DIGEST:

Protest is dismissed where the material issues are before a court of competent jurisdiction, judicial relief pending a decision by GAO has not been requested, and the court has not expressed interest in receiving GAO's views.

Latitudes Marine, Inc. (formerly known as Pacific Maritime Consultants, Inc.), protests the award of a contract to Public Service Marine, Inc. under request for proposals No. N62383-84-R-7034, issued by Military Sealift Command, Department of the Navy, for target towing services near San Diego, California. Latitudes Marine alleges that Public Service Marine is controlled by and is a joint venture partner with a large business, Pacific Tugboat Co., and thus was ineligible for award under the solicitation, a total small business set-aside. Although we ordinarily dismiss protests questioning another firm's small business size status since by statute that determination must be made by the Small Business Administration, we retained this case for consideration because it was not clear whether the Navy had complied with the requirement that it not proceed with the award of a contract prior to giving other offerors 5 days in which to challenge the small business size status of the apparent successful offeror. See Federal Acquisition Regulation, § 15.1001(b)(2).

Subsequent to filing this protest, however, Latitudes Marine filed an action in the United States District Court for the Southern District of California (No. 84-1845-G(I)) concerning the award to Public Service Marine. Latitudes Marine is seeking permanent injunctive and declaratory relief, compensatory and punitive damages, and imposition of a constructive trust upon the proceeds of the contract. The court's resolution of the issues before it will control the resolution of the protest since the issues raised in the protest are among those before the court.

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It is our policy not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision. See 4 C.F.R. § 21.10; Isometrics, Inc., B-215010, June 26, 1984, 84-1 CPD ¶ 671. Latitudes Marine has not requested judicial relief pending a decision by our Office, and the court has not indicated an interest in our decision.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel